

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this ____ day of February, 2013, by and between the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Eastern District of Kentucky ("USAO"), and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively, "United States"), and Villaspring Health Care Center, Inc., d/b/a Villaspring of Erlanger Health Care Center and Rehabilitation ("Villaspring"), Carespring Health Care Management, LLC ("Carespring") (collectively, "Defendants"), and Barry N. Bortz ("Bortz"), through their authorized representatives, to resolve the claims and disputes more fully described herein. The Agreement is effective on the date of the signature of the last signatory to the Agreement ("Effective Date"). The period of obligations assumed by Defendants under this Agreement shall be three (3) years from the Effective Date (unless otherwise specified).

RECITALS

A. WHEREAS, Villaspring is an Ohio corporation providing long term care at 630 Viox Drive, Erlanger, Kentucky;

B. WHEREAS, Carespring is an Ohio limited liability company located at 390 Wards Corner Road, Loveland, Ohio. Carespring provides certain management services to Villaspring;

C. WHEREAS, on July 15, 2011, the United States filed an action in the United States District Court of the Eastern District of Kentucky captioned *United States of America v. Villaspring Health Care Center, Inc., d/b/a Villaspring of Erlanger Health Care Center and Rehabilitation, Carespring Health Management, LLC, and Barry N. Bortz*, 11-cv-00043-DCR (the "Civil Action");

D. WHEREAS, the United States contends that it has certain claims against the

Defendants, as it alleged in the Civil Action (hereinafter referred to as the "Covered Conduct");

E. WHEREAS, Bortz was dismissed as a Defendant in the Civil Action and he and the remaining Defendants deny any wrongdoing, inadequate or deficient care, violations or liability in regard to the Civil Action and the Covered Conduct;

F. WHEREAS, the parties agree that this Agreement is neither an admission of liability by Defendants or Bortz, nor a concession by the United States that its claims are not well founded;

G. WHEREAS, the parties wish to resolve this matter in an amicable manner without the need for protracted litigation;

NOW THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the Covered Conduct, and in consideration of the mutual promises and obligations of this Agreement, the parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants agree to pay the settlement amount of \$350,000 ("Settlement Amount") in settlement of their potential civil liability to the United States relating to the Covered Conduct.
2. Defendants shall pay to the United States the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the USAO no later than 30 days after the Effective Date of this Agreement.
3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) and Paragraph 13 (concerning bankruptcy proceedings) below, and conditioned upon Defendants' full payment of the Settlement Amount, in consideration of the obligations of Defendants set forth in this Agreement, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Defendants, and their respective owners, members, managers,

officers, directors, employees, agents and representatives, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct.

4. In consideration of the obligations of Defendants set forth in this Agreement, conditioned upon Defendants' full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Defendants and Bortz, who is majority owner and CEO of Defendants, under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), or 42 U.S.C. § 1320a-7(b)(6)(B) (permissive exclusion for substandard care) for the Covered Conduct, except as reserved in Paragraph 5 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Defendants from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

5. Notwithstanding any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- (a) Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability;
- (c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (d) Any liability to the United States (or its agencies) for any conduct other

than the Covered Conduct; and

(e) Any liability based upon obligations created by this Agreement.

6. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

7. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

9. Defendants agree to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal

Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendants make to the United States pursuant to this Agreement; and
- (6) the negotiation of, and obligations undertaken pursuant to the Agreement to: (i) retain and pay an independent Consultant as described in Paragraph 18, below; and (ii) prepare and submit reports to the United States.

However, nothing in this paragraph 9(a)(6) that may apply to the obligations undertaken pursuant to the Agreement affects the status of costs that are not allowable based on any other authority applicable to Defendants.

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with

the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment:

Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants' or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the

United States to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 11 (waiver for beneficiaries paragraph), below.

11. Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

12. Defendants warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants were or become indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Defendants commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of

debtors (a) seeking to have any order for relief of Defendants' debts, or seeking to adjudicate Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets, Defendants agree as follows:

(a) Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

(b) If Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5, above. Defendants agree that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendants shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 30 calendar days of written notification to Defendants that

the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States has a valid claim against Defendants in the amount of \$350,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) Defendants acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Defendants shall comply fully with the applicable laws, rules, and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act.

15. Compliance Program: The parties acknowledge that Defendants have a compliance plan for Villaspring. The parties agree that Defendants shall continue to have a compliance plan (the "Compliance Program") for Villaspring that incorporates the policies and principles set forth in OIG-HHS's Compliance Program Guidance for Nursing Facilities and is aimed at ensuring Villaspring's adherence with Federal health care programs requirements. All of Villaspring's employees and officers, and Defendants' officers, directors, and employees who provide oversight for Villaspring, including Bortz, shall continue to participate in the Compliance Program. The Compliance Program shall include or continue to include, among other things, a Code of Conduct, a Compliance Officer, a Quality Assurance Compliance Committee, policies and procedures for implementing the Compliance Program, training and education requirements, a mechanism for individuals to report incidents of non-compliance in an anonymous manner, disciplinary action for individuals violating compliance policies and procedures, and mechanisms for the ongoing monitoring and auditing of Defendants' operations as they relate to quality of care at Villaspring. Defendants agree to maintain the Compliance Program in full operation for three years from the Effective Date of this Agreement and to update

the Compliance Program pursuant to statutory and regulatory changes.

16. To the extent not already established, within 90 days of the Effective Date, Defendants shall develop and begin implementing written Policies and Procedures regarding the operation of the Compliance Program for Villaspring and their compliance with all Federal and state health care statutes, regulations, directives, and guidelines, including the requirements of the Federal health care programs. At a minimum, these Policies and Procedures shall specifically address:

(a) Measures designed to ensure that, with respect to Villaspring, Defendants fully comply with Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and all regulations, directives, and guidelines promulgated pursuant to these statutes, including, but not limited to, 42 C.F.R. Parts 424, 482, and 483, and any other state or local statutes, regulations, directives, or guidelines that address quality of care in nursing homes.

(b) Measures designed to ensure that, with respect to Villaspring, Defendants comply with all requirements applicable to Medicare's Prospective Payment System for skilled nursing facilities, including, but not limited to: ensuring the accuracy of the clinical data required under the Minimum Data Set (MDS) as specified by the Resident Assessment Instrument User's Manual; ensuring that staff are appropriately and accurately using the current Resource Utilization Group (RUG) classification system; and ensuring the accuracy of billing and cost report preparation policies and procedures;

(c) Measures designed to ensure the coordinated interdisciplinary approach to providing care to Villaspring residents, including, but not limited to the following areas addressed in 42 C.F.R. § 483: resident assessment and care planning; nutrition; diabetes care; wound care; infection control; fall prevention, recovery, and assessment; abuse and neglect policies and reporting procedures; protection from harm procedures; appropriate drug therapies;

appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; activities of daily living care; therapy services; quality of life, including accommodation of needs and activities; and assessment of resident competence to make treatment decisions;

(d) Measures designed to ensure that accurate and complete notes of Villaspring resident care are maintained and that, with respect to Villaspring, Defendants comply with other clinical documentation as required by applicable Federal law, which shall include (1) that all resident care information be recorded in permanent ink, permanent print, or permanent electronic record (*i.e.*, all documentation must be permanent regardless of form or format); (2) that corrections shall only be made in accordance with accepted health information management standards; (3) that erasures shall not be allowable; and (4) that clinical records may not be rewritten or destroyed to hide or otherwise make a prior entry unreadable or inaccessible;

(e) Measures designed to ensure that staffing needs are based first and foremost upon achieving the level of care for Villaspring's residents required by federal and state laws, including, but not limited to, 42 C.F.R. § 483.30;

(f) Measures that specify that if the director of nursing or other person who is making staffing decisions for Villaspring disagrees with a staffing determination made by the Administrator or other individuals at the corporate level, where that determination is not in compliance with state or federal regulations or this Agreement and that significantly affects resident care, and is unable to resolve the issue through the normal chain of responsibility, then that person must immediately call the hotline and the Consultant. Nothing in this subsection prohibits or prevents such person from contacting the hotline or Consultant without first going through the normal chain of responsibility;

(g) Measures designed to inform employees during orientation and during other

training required by this Agreement that staffing levels are a critical aspect of resident care, and that if any person has a concern about the level of staffing there are many avenues available to report such concerns, including, but not limited to, direct communication with the Administrator, the hotline, the Compliance Officer, or the Consultant;

(h) Measures designed to minimize the number of individuals working at Villaspring who are on a temporary assignment or not employed by Villaspring and measures designed to create and maintain a standardized system to track the number of individuals at Villaspring who fall within this category so that the number/proportion of such staff can be adequately identified by Defendants or the Consultant;

(i) Measures designed to ensure that all Villaspring residents are served in the least restrictive environment and most integrated setting appropriate to their needs;

(j) Measures designed to promote adherence to the compliance and quality of care standards set forth in the statutes and regulations applicable to Villaspring, and this Agreement. Adherence to these quality of care standards shall be considered as a significant factor in determining the compensation to Administrators and Directors of Nursing, and the individuals responsible for such compliance at the corporate level;

(k) Measures designed to ensure cooperation by Defendants and their employees with the Consultant in the performance of his or her duties as set forth herein;

(l) Measures designed to ensure that, with respect to Villaspring, compliance issues are identified internally or externally and are promptly and appropriately investigated. If the investigation substantiates the compliance issues, Defendants shall implement effective and timely corrective action plans and monitor compliance with such plans;

(m) Measures designed to ensure that appropriate and qualified individuals perform the internal quality audits and reviews;

(n) Non-retaliation policies and mechanisms for employees to make disclosures or otherwise report on compliance issues through the Compliance Program;

(o) Disciplinary guidelines to reflect Villaspring's Code of Conduct requirements;

(p) Measures designed to ensure that, with respect to Villaspring, Defendants have a system to require and centrally collect reports relating to pressure ulcers. The reports required under this system shall provide the Quality Assurance Committee sufficiently meaningful information to determine: (1) if there is a quality of care problem; and (2) the scope and severity of that problem;

(q) Measures that define the role and responsibilities of the Villaspring Medical Director; and

(r) Measures designed to ensure that, with respect to Villaspring, Defendants have an effective quality assurance and review program that, at a minimum, performs the following functions:

(1) makes findings as to whether the residents at Villaspring are receiving the quality of care and quality of life consistent with basic care, treatment and protection from harm standards, including but not limited to the standards set forth in 42 C.F.R. Parts 482 and 483 and any other applicable Federal and state statutes, regulations, or directives;

(2) makes findings as to whether the policies and procedures mandated by this Agreement are created, implemented, and enforced;

(3) makes findings as to whether training is performed in accordance with this Agreement;

(4) makes findings as to whether hotline complaints are appropriately investigated; and

- (5) makes findings as to whether corrective action plans are timely created, implemented, and enforced.

Defendants shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. The Policies and Procedures shall be available to the United States upon request. Within 90 days of the Effective Date, the relevant portions of the Policies and Procedures shall be provided to all employees. Compliance staff or supervisors shall be available to explain any and all policies and procedures.

17. Training: All training required by this Paragraph shall be competency based. Specifically, training must be developed and provided in such a way as to focus on employees achieving learning outcomes to a specified competency and to place emphasis on what an employee has learned as a result of the training.

(a) *General Training*: Defendants shall continue to provide at least one hour of training to each Villaspring employee and each of Defendants' officers, directors, and employees who provide oversight for Villaspring, including Bortz, annually. This general training shall explain Defendants' Compliance Program and Code of Conduct.

(b) *Specific Training*. Defendants shall continue to provide specific training to each Villaspring employee, contractor, and agent who is involved directly or indirectly in the delivery of resident care (including, *e.g.*, individuals who are responsible for quality assurance, setting policies or procedures, or making staffing decisions). Such employees shall receive at least four hours of training pertinent to their responsibilities in addition to the general training required above. This training, which shall be completed within 120-days of the Effective Date and conducted at least annually thereafter, shall include a discussion of the policies and procedures set forth in Paragraph 16, including but not limited to:

- (1) Policies, procedures, and other requirements applicable to the

documentation of medical records; and

(2) The coordinated interdisciplinary approach to providing care to residents, including, but not limited to, resident assessment and care planning; nutrition; diabetes care; wound care; infection control; fall prevention, recovery, and assessment; abuse and neglect policies and reporting procedures; protection from harm procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; activities of daily living care; therapy services; quality of life, including accommodation of needs and activities; and assessment of resident competence to make treatment decisions.

In addition to the specific training described above, Defendants shall conduct periodic training on an "as needed" basis (but at least semi-annually) on those quality of care issues identified by the Quality Assurance Compliance Committee and Internal Audit Program. In determining what training should be performed, Defendants shall review the complaints received, satisfaction surveys, staff turnover data, any state or federal surveys, including those performed by the Joint Commission on Accreditation of Healthcare Organizations (TJC) or other such private agencies, any internal surveys, the CMS quality indicators and quality measures, and the findings, reports, and recommendations of the Consultant. Such training shall be for a minimum of four hours total annually. Such training shall be provided to all employees, contractors, and agents who are responsible for resident care at Villaspring.

All training materials shall be made available to the United States upon request. Persons providing the training must have sufficient expertise in the subject area.

18. Independent Consultant: Within 45 days after the Effective Date of this Agreement, Defendants shall retain an appropriately qualified Independent Consultant

("Consultant") for Villaspring approved by the United States after consultation with Defendants. The Consultant may retain additional personnel, including but not limited to independent consultants, if needed to help meet the Consultant's obligations under this Agreement. Defendants shall be responsible for all costs incurred by the Consultant, including, but not limited to, travel costs, consultants, administrative personnel, office space and equipment, additional personnel and all costs associated with fulfilling its obligations set forth in Paragraphs 18 and 19 of this Agreement. The Consultant shall charge a reasonable amount for his or her fee and expenses. Failure to pay the Consultant within 30 calendar days of submission of his or her invoices for services previously rendered shall constitute a breach of this Agreement and shall subject Defendants and Bortz to one or more of the remedies set forth in Paragraph 21, below. The Consultant may be removed solely at the discretion of the United States. If the Consultant resigns or is removed for any reason prior to the termination of the Agreement, Defendants shall retain another Consultant approved by the United States, with the same functions and authorities. The Consultant may confer and correspond with Defendants and the United States on an *ex parte* basis.

(a) The Consultant shall be responsible for assessing the effectiveness, reliability and thoroughness of the following:

(1) With respect to Villaspring, Defendants' internal quality control systems, including, but not limited to: (A) whether the systems in place to promote quality of care and to respond to quality of care issues are functioning in a timely and effective manner; and (B) whether the communication system is effective, allowing for accurate information, decisions, and results of decisions to be transmitted to the proper individuals in a timely fashion;

(2) With respect to Villaspring, Defendants' training programs;

(3) With respect to Villaspring, Defendants' response to quality of care issues, which shall include an assessment of: (A) Defendants' ability to identify each problem; (B) Defendants' ability to determine the scope of the problem, including but not limited to whether the problem is isolated or systemic; (C) Defendants' ability to create a corrective action plan to respond to the problem; (D) Defendants' ability to execute the corrective action plan; and (E) Defendants' ability to evaluate whether the assessment, corrective action plan, and execution of that plan was effective, reliable, and thorough;

(4) Defendants' development and implementation of corrective action plans and the timeliness of such actions;

(5) Defendants' proactive steps to ensure that each resident receives care in accordance with: (A) basic care, treatment and protection from harm standards; (B) the rules and regulations set forth in 42 C.F.R. Parts 482 and 483; (C) state and local statutes, regulations, and other directives or guidelines; or (D) the policies and procedures adopted by Defendants with respect to Villaspring and set forth in this Agreement.

(b) With respect to Villaspring, the Consultant shall have:

(1) immediate access to Villaspring and its facilities, at any time and without prior notice, to assess compliance with this Agreement, to assess the effectiveness of the internal quality assurance mechanisms, and to ensure that the data being generated is accurate;

(2) immediate access to: (A) CMS quality indicators and quality measures; (B) internal or external surveys or reports; (C) hotline complaints; (D) resident satisfaction surveys; (E) staffing data in the format requested by the Consultant,

including reports of any time more than 10 percent of the staff are hired on a temporary basis; (F) reports of resident abuse, neglect, or an incident that required hospitalization or emergency room treatment of a resident; (G) reports of any resident falls; (H) reports of any incident involving a resident that prompts a full internal investigation; (I) resident records; (J) documents in the possession or control of any quality control committee, peer review committee, medical review committee, or other such committee; and (K) any other data in the format the Consultant determines relevant to fulfilling the duties required under this Agreement;

(3) immediate access to residents, and employees for interviews outside of the presence of Defendants' supervisory staff or counsel, provided such interviews are conducted in accordance with all applicable laws and the rights of such individuals. The Consultant shall give full consideration to an individual's clinical condition before interviewing a resident.

(c) *Defendants' Obligations.* With respect to Villaspring, Defendants shall:

(1) Ensure the Consultant's immediate access to Villaspring and its facilities, individuals, and documents, and assist in obtaining full cooperation by its current employees, contractors, and agents;

(2) Provide the Consultant with a report monthly, or sooner if requested by the Consultant, regarding each of the following occurrences: (A) deaths or injuries related to use of restraints; (B) deaths or injuries related to use of psychotropic medications; (C) suicides; (D) deaths or injuries related to abuse or neglect (as defined in the applicable Federal guidelines); (E) fires, storm damage, flooding, or major equipment failures at Villaspring; (F) strikes or other work

actions; (G) Manmade disasters that pose a threat to residents (e.g., toxic waste spills); and (H) any other incident that involves or causes actual harm to a resident when such incident prompts a full internal investigation. Each such report shall contain the full name, social security number, and date of birth of the resident(s) involved, the date of the death or incident, a brief description of the incident, the identities of the persons involved, the status of the investigation, any corrective action taken in response to the investigation, and any other steps taken to prevent recurrence.

- (3) Assist in locating and, if requested, obtaining cooperation from past employees, contractors, agents, and residents and their families;
- (4) Provide access to current residents, and contact information for their families and guardians, and not impede their cooperation with the Consultant;
- (5) Provide to the Quality Assurance Compliance Committee copies of all documents and reports provided to the Consultant;
- (6) Promptly address any written recommendation made by the Consultant either by substantially implementing the Consultant's recommendations or by explaining in writing why they have elected not to do so;
- (7) Pay the Consultant's bills within 30 days of receipt. While Defendants must pay all of the Consultant's bills within 30 days, Defendants may bring any disputed Consultant's costs or bills to the attention of the USAO, and Defendants, Consultant, and the USAO shall engage in good faith efforts to resolve the dispute; and
- (8) Not sue or otherwise bring any action against the Consultant related to any findings made by the Consultant or related to the exclusion or other sanction of

Defendants or Bortz under this Agreement; provided, however, that this clause shall not apply to any suit or other action based solely on the dishonest or illegal acts of the Consultant, whether acting alone or in concert with others.

(d) *The Consultant's Obligations.* With respect to Villaspring, the Consultant shall:

- (1) Respect the legal rights, privacy, and dignity of all employees and residents;
- (2) Where independently required to do so by applicable law or professional licensing standards, report any finding to an appropriate regulatory or law enforcement authority, and simultaneously submit copies of such reports to the United States and to Defendants;
- (3) At all times act reasonably and in compliance with applicable law and professional standards in connection with its duties under this Agreement, including when requesting information from Defendants;
- (4) Simultaneously provide quarterly reports to Defendants and the United States concerning the findings made to date;
- (5) Submit bills to Defendants on a consolidated basis no more than once per month, and shall submit to Defendants and the United States an annual report representing an accounting of all of its fees, costs and expenses throughout the year;
- (6) Not be bound by any other private or governmental agency's findings or conclusions, including, but not limited to, TJC, CMS, or the state survey agency. Likewise, such private and governmental agencies shall not be bound by the Consultant's findings and conclusions. The Consultant's reports shall not be the sole basis for determining deficiencies by the state survey agencies. The parties

agree that CMS and its contractors shall not introduce any material generated by the Consultant, or any opinions, testimony, or conclusions from the Consultant, as evidence into any proceeding involving a Medicare or Medicaid survey, certification, or other enforcement action against Defendants with respect to Villaspring, and Defendants shall be similarly restricted from using material generated by the Consultant, or any opinions, testimony, or conclusions from the Consultant, as evidence in any of these proceedings. Nothing in the previous sentence, however, shall preclude the United States or Defendants from using any material generated by the Consultant, or any opinions, testimony, or conclusions from the Consultant, in any action under this Agreement or pursuant to any other United States authorities or in any other situations not explicitly excluded in this subsection;

(7) Abide by the legal requirements of Defendants to maintain the confidentiality of each resident's personal and clinical records. Nothing in this subsection, however, shall limit or affect the Consultant's obligation to provide information, including information from resident clinical records, to the United States, and, when legally or professionally required, reporting to other agencies;

(8) Abide by the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") to the extent required by law;

(9) Except to the extent required by law, maintain the confidentiality of any proprietary financial and operational information, processes, procedures, and forms obtained in connection with its duties under this Agreement and not comment publicly concerning its findings except to the extent authorized by the United States;

(10) Visit Villaspring as often as the Consultant believes it necessary to perform its functions.

19. During the three-year period of this Agreement, 30 days after the first, second, and third anniversary date of this Agreement, Defendants will submit Annual Reports to the USAO regarding the status of their compliance with this Agreement. With respect to Villaspring, each annual report shall include:

(a) Any amendments or revisions to Defendants' Compliance Program made during the preceding year and the reasons for such changes;

(b) A description of the training programs implemented pursuant to this Agreement, including a description of the targeted audiences and a schedule of when the training sessions were held;

(c) A summary of the findings of all reviews conducted pursuant to the quality assurance and review program described in Paragraph 16, above, and a summary of any corrective action taken as a result of such reviews;

(d) Defendants' responses and corrective actions taken regarding any issues raised by the Consultant; and

(e) A certification by the Compliance Officer that all applicable persons have completed the required training, that Defendants are in compliance with all the requirements of this Agreement, and that the Compliance Officer has reviewed the Annual Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

(f). A certification by Barry N. Bortz that states:

"I have been trained on and understand the compliance requirements and responsibilities as they relate to Villaspring. As owner and CEO, my job responsibilities include ensuring Villaspring's compliance with all applicable Federal health care program requirements, and

compliance obligations of this Agreement, and Carespring's policies, and I have taken steps to promote such compliance. In the event that I have identified potential issues of noncompliance with these requirements, I have taken steps to correct the issues in consultation with the Compliance Officer and pursuant to the independent Consultant's recommendations. Apart from those referred issues, I am not currently aware in Villaspring of any violations of applicable Federal health care program requirements, or the obligations of this Agreement. I understand that this certification is being provided to and relied upon by the United States."

20. In the event that Defendants fail to comply in good faith with any of the terms of this Agreement relating to them, or should any of Defendants' representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- (a) Seek specific performance of the Agreement, and, should it prevail, be entitled to an award of reasonable attorney's fees and costs in its favor; or
- (b) Exercise any other right granted by law; or
- (c) Seek exclusion of Defendants and/or Bortz by the OIG-HHS for material breach of Defendants' compliance with Paragraphs 15-19, above, pursuant to the procedures set forth in Paragraph 21, below.
- (d) Seek exclusion of Bortz by the OIG-HHS should he make a false certification related to this Agreement.

21. OIG-HHS Remedy of Exclusion for Material Breach of this Agreement

- (a) *Definition of Material Breach.* A material breach of this Agreement means:
 - (1) a failure to meet an obligation under this Agreement that has a material impact on the quality of care rendered to any resident of Villaspring;
 - (2) repeated or knowing violations of the obligations under this Agreement; or

(3) a failure to retain, pay, or use the Consultant in accordance with Paragraph 18.

(b) *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this Agreement by Defendants constitutes an independent basis for the exclusion of Defendants and/or Bortz from participation in the Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f). Upon a determination by the OIG-HHS, at its sole discretion, that Defendants have materially breached this Agreement and that exclusion should be imposed, the OIG-HHS shall notify Defendants and/or Bortz by certified mail of (1) Defendants' material breach, and (2) the OIG-HHS's intent to exercise its contractual right to impose exclusion (Notice of Material Breach and Intent to Exclude Letter).

(c) *Opportunity to Cure.* Defendants and/or Bortz shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG-HHS's satisfaction that:

- (1) Defendants are in full compliance with this Agreement;
- (2) The alleged material breach has been cured; or
- (3) The alleged material breach cannot be cured within the 30-day period, but that (A) Defendants have begun to take action to cure the material breach, (B) Defendants are pursuing such action with due diligence, and (C) Defendants have provided to the OIG-HHS a reasonable timetable for curing the material breach.

(d) *Exclusion Letter.* If at the conclusion of the 30-day period, Defendants fail to satisfy the requirements of section C above, OIG-HHS may exclude Defendants and/or Bortz from participation in the Federal health care programs. The OIG-HHS shall notify Defendants and/or Bortz in writing of its determination to exclude Defendants and/or Bortz (Exclusion Letter). Subject to the Dispute Resolution provisions in section E below, the exclusion shall go

into effect 30 days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. If Defendants and/or Bortz are excluded under the provisions of this Agreement, Defendants and/or Bortz may seek reinstatement pursuant to the provisions of 42 C.F.R. §§ 1001.3001-3004.

(e) *Dispute Resolution*

(1) *Review Rights.* Upon the OIG-HHS's delivery to Defendants and/or Bortz of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this Agreement, Defendants and/or Bortz shall be afforded certain review rights comparable to those set forth in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the exclusion sought pursuant to this Agreement. Specifically, OIG-HHS's determination to seek exclusion shall be subject to review by an HHS Administrative Law Judge ("ALJ") and, in the event of an appeal, the HHS Departmental Appeals Board ("DAB"), in a manner consistent with the provisions of 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), a request for a hearing involving exclusion shall be made within 30 days after receipt of the Exclusion Letter.

(2) *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issue that may be raised in a proceeding for exclusion based on a material breach of this Agreement shall be: (A) whether Defendants were in material breach of this Agreement; (B) whether such breach was continuing on the date of the Exclusion Letter; and (C) whether the alleged material breach cannot be cured within the 30-day period, but that (1) Defendants had begun to take action to cure

the material breach within that period, (2) Defendants have pursued and are pursuing such action with due diligence, and (3) Defendants provided to OIG-HHS within that period a reasonable timetable for curing the material breach and Defendants have complied with that timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG-HHS, or, if the ALJ rules for Defendants and/or Bortz, only after a DAB decision in favor of OIG-HHS. Defendants' and/or Bortz's election of its contractual right to appeal to the DAB shall not abrogate OIG-HHS's authority to exclude Defendants and/or Bortz upon the issuance of an ALJ's decision in favor of OIG-HHS. If the ALJ sustains the determination of OIG-HHS and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Defendants and/or Bortz may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG-HHS after an ALJ decision adverse to OIG-HHS, the exclusion shall take effect 20 days after the DAB decision. Defendants and/or Bortz shall waive their right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Defendants and/or Bortz, Defendants and/or Bortz shall be reinstated effective on the date of the original exclusion.

(3) *Finality of Decision.* The review by an ALJ or the DAB provided for above shall not be considered to be an appeal right arising under any statute or regulation. Consequently, the parties to this Agreement agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this Agreement.

(f) *Review by Other Agencies.* Nothing in this Agreement shall affect the right of CMS or any other federal or state agency to enforce any statutory or regulatory authorities with

respect to Defendants' compliance with applicable state and Federal health care program requirements.

22. Upon receipt of the payment described in Paragraph 2, above, the parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41.

23. Each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

24. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

25. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Kentucky, except that disputes arising under the exclusion for breach provisions of Paragraph 21 shall be resolved exclusively under the dispute resolution process set forth therein.

26. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

27. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

28. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

29. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

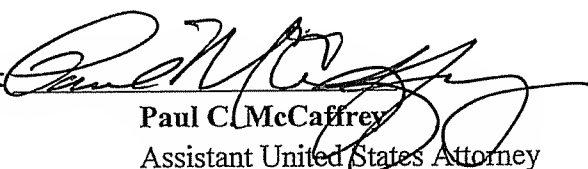
30. This Agreement is binding on Defendants' successors, transferees, heirs, and

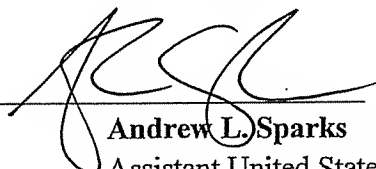
assigns.

31. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

32. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 2/14/2013 BY: 
Paul C. McCaffrey
Assistant United States Attorney
Eastern District of Kentucky

DATED: 2/14/13 BY: 
Andrew L. Sparks
Assistant United States Attorney
Eastern District of Kentucky

DATED: _____ BY: _____
Robert K. DeConti
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

VILLASPRING HEALTH CARE CENTER, INC.

DATED: 02/12/2013

BY: 

Barry N. Bortz
CEO, Villaspring Health Care Center, Inc.

CARESPRING HEALTH CARE MANAGEMENT, LLC

DATED: 02/12/2013

BY: 

Barry N. Bortz
CEO, Carespring Health Care Management, LLC

DATED: 02/12/2013

BY: 

BARRY N. BORTZ
Barry N. Bortz, Individually